

PROGRAMMATIC AGREEMENT

BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, COLORADO DIVISION AND THE COLORADO DEPARTMENT OF TRANSPORTATION REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS

(CDOT CatEx Agreement)

June 2017

THIS PROGRAMMATIC AGREEMENT (“Agreement”), made and entered into this by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (FHWA) and the STATE of Colorado, acting by and through its COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) hereby provides as follows:

I. Introduction

FHWA and CDOT entered into this agreement in order to better execute and deliver categorical exclusion (CatEx) level projects. This agreement is the result of strong working relationships between FHWA and CDOT.

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.*, and the Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508) direct Federal agencies to consider the environmental impacts of their proposed major Federal actions through the preparation of an environmental assessment (EA) or environmental impact statement (EIS) unless a particular action is categorically excluded. FHWA's NEPA implementing procedures (23 CFR part 771) list a number of CatEx for certain actions that FHWA has determined do not individually or cumulatively have a significant effect on the human environment and therefore do not require the preparation of an EA or EIS (23 CFR 771.117).

FHWA follows the philosophy that the goal of the NEPA process is better decisions and not bigger documents. This Agreement is intended to increase flexibility and streamline the environmental process. This Agreement provides for the expeditious processing of CatEx level actions by CDOT, under the guidance and with the approval of FHWA.

FHWA retains full federal authority and responsibility on all federal aid projects, and reserves the right to modify document classification on a case-by-case basis. This Agreement shall also not preclude FHWA's right to request individual review and/or approval of any CatEx action.

FHWA relies on the expertise and experience of CDOT staff for implementation of this Agreement. FHWA will provide guidance, oversight, technical assistance, and approval as appropriate. CDOT may request technical assistance from FHWA at any time. Such requests do not override the provisions contained in this Agreement.

This Agreement does not preclude CDOT from requesting individual CatEx review and approval from FHWA when deemed necessary even though the action falls within the bounds of this Agreement. This Agreement does not preclude processing projects outside the bounds of this Agreement with FHWA's participation and approval.

II. Purpose

- a. The purpose of this Agreement is to authorize CDOT, under certain circumstances, to determine on behalf of FHWA whether a project qualifies for a CatEx action specifically listed in 23 CFR 771.117 (listed in Appendices A and B of this Agreement). This Agreement also authorizes CDOT to certify to FHWA that an action that cannot be approved on behalf of FHWA according to the terms of this Agreement, but meeting the CatEx criteria in 40 CFR 1508.4 and 23 CFR 771.117(a), qualifies for a CatEx as long as there are no unusual circumstances present that could require the preparation of either an environmental assessment (EA) or an environmental impact statement (EIS). Unusual circumstances, as defined in 23 CFR 771.117(b), include: *(1) Significant environmental impacts; (2) Substantial controversy on environmental grounds; (3) Significant impact on properties protected by section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.*

III. Authorities

This agreement is entered into pursuant to the following authorities:

- a. National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*
- b. Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405, Sec. 1318(d) (July 6, 2012)
- c. Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015)

- d. CEQ NEPA implementing regulations, 40 CFR parts 1500 - 1508
- e. Procedures for Considering Environmental Impacts, DOT Order 5610.1C
- f. FHWA Categorical Exclusions regulation, 23 CFR 771.117

IV. Definitions

- a. For the purposes of this Agreement, the following classifications of CatEx documents are defined:
 - i. Programmatic Categorical Exclusion: An action that, based on past experience, does not involve significant environmental impacts and may be processed by CDOT under this Agreement. FHWA concurs in advance, on a programmatic basis, with CDOT's designation that those types of projects that satisfy certain conditions identified in this Agreement qualify as CatExs. CDOT signs the Form 128 documenting the environmental clearance, and no project-specific FHWA review or approval is necessary.
 - ii. Non-Programmatic Categorical Exclusion: An action that does not individually or cumulatively have significant environmental impacts, but requires additional review by FHWA. CDOT prepares and signs the Form 128, which is then approved and signed by FHWA.
 - iii. "C" list: Actions or projects listed in 23 CFR 771.117(c).
 - iv. "D" list: Actions or projects listed in 23 CFR 771.117(d).
 - v. Form 128: CDOT's NEPA Determination/Project Certification.
- b. Other terms used in this agreement are defined:
 - i. Agreement: The agreement between FHWA and CDOT for execution of CatEx level projects and the reporting mechanism set forth.
 - ii. CDOT: The Colorado Department of Transportation
 - iii. CatEx: Categorical Exclusions (CatExs) are the most common National Environmental Policy Act (NEPA) documents and are actions that do not individually or cumulatively have a significant environmental impact and are excluded from the requirement to prepare an EA or an EIS. The FHWA/FTA regulations describe activities that are CatExs (FHWA, 23 CFR § 771.101 – 771.118).
 - iv. Certification: An action taken by CDOT that approves the project and its CatEx category.
 - v. Criteria Checklist: A form listing all 21 criteria that would require that a project be processed as a non-programmatic CatEx. This form will be an appendix to this agreement and it (or equivalent information) is a required piece of each project file. The intent of the Checklist is to consolidate and provide an easy reference for multiple regulatory requirements, which can affect NEPA and CatEx classification.
 - vi. CFR: Code of Federal Regulations.

- vii. EA: Environmental Assessment.
- viii. EIS: Environmental Impact Statement
- ix. FHWA: Federal Highway Administration

V. CDOT Responsibilities

- a. Ensuring the following process is completed for each project that qualifies for a CatEx:
 - i. For all CatExs, CDOT will fill out a CDOT Form 128 (see *Appendix C – Form 128*).
 - ii. CDOT may approve, on behalf of FHWA, those CatExs specifically listed in 23 CFR 771.117(c) and (d) (also listed in *Appendix A – C List Categories and Appendix B – D List Categories*) that do not exceed the thresholds in Section V.a.v. below (see also *Appendix D – Criteria Checklist*). CDOT will identify the applicable CatEx category from 23 CFR 771.117(c) or (d), ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address any and all other environmental requirements, and complete the review with a signature evidencing approval. No project-specific review or approval of the CatEx by FHWA is required.
 - iii. If FHWA adds, through rulemaking, additional CatEx categories to 23 CFR 771.117(c) and/or (d), those categories can be used by CDOT without needing to be added to Appendices A and/or B.
 - iv. For projects which meet the definition of a CatEx in 23 CFR 771.117 (a) and (b), but is not covered by a category in 23 CFR 771.117(c) and (d), it will be considered a non-programmatic CatEx and the category DX will be used on the Form 128.
 - v. CDOT may not approve actions listed in 23 CFR 771.117(c) or (d) that exceed any of the following thresholds. CDOT is responsible for certifying to FHWA that the action qualifies for a CatEx. An action exceeding any threshold requires FHWA CatEx review and approval, based on CDOT certification of the action or may require an EA or EIS.
 - 1. **Significant Impacts:** Has any significant environmental impacts as described in 23 CFR 771.117(a).
 - 2. **Unusual Circumstances:** Involves unusual circumstances as described in 23 CFR 771.117(b).
 - a. Significant environmental impacts;
 - b. Substantial controversy on environmental grounds;
 - c. Significant impact on properties protected by section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or

- d. Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.
3. **Through Lanes:** Results in capacity expansion of a roadway by addition of through lanes;
4. **Right of Way¹:** Involves acquisitions (fee simple) of more than a minor amount of right-of-way. A minor amount of right-of-way is defined as not more than 10% of any adjacent parcels for transportation related facilities (e.g. rest areas, intersections, maintenance yards) (note, this requirement does not apply to “perfection of title for ROW” projects under 23 CFR 771.117(c)(5));
5. **Displacements¹:** Involves acquisitions that result in any residential or non-residential displacements;
6. **Early Acquisition:** Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project (23 U.S.C. § 108(c));
7. **Section 404 Permit¹:** Requires a U.S. Army Corps of Engineers Section 404 (33 U.S.C. § 1344) permit other than a Nationwide Permit or a Regional General Permit;
8. **Bridge Permit¹:** Requires a U.S. Coast Guard bridge permit (33 U.S.C. § 401);
9. **Historic Properties¹:** Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act (54 U.S.C. § 306108);
10. **Section 4(f)¹:** Requires the use of properties protected by Section 4(f) (49 U.S.C. § 303/23 U.S.C. § 138) that cannot be documented with an FHWA *de minimis* determination (as defined in 23 CFR 774.17) or exception (23 CFR 774.13);
11. **Section 6(f):** Converts lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965 (54 U.S.C. § 200305), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k, 64 Stat. 430), the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669j; 50 Stat. 917), or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property;

¹ If the project is category C26, C27, or C28, exceeding any of the criteria referenced to this footnote would require that category D13 be used instead.

12. **Endangered Species¹:** Requires formal consultation under Section 7 of the Endangered Species Act (16 U.S.C. 1536);
13. **Temporary Access and Road Closures¹:** Involves the construction of temporary access, or the temporary closure of existing road, bridge, or ramps, that would result in major traffic disruptions, unless the use of such facilities satisfy the following conditions:
 - a. Provisions are made for access by local traffic and so posted;
 - b. The temporary access or closure, to the extent possible, will not interfere with any local special event or festival;
 - c. The closure does not substantially change the environmental consequences of the action;
14. **Permanent Road Closures¹:** Involves the permanent closure of existing road, bridge, or ramps, unless the following conditions are met:
 - a. No major traffic disruptions;
 - b. No substantial adverse effects to through-traffic dependent businesses;
 - c. No substantial changes to the environmental consequences of the action as a result of the closure;
 - d. No substantial controversy associated with the closure;
15. **Access Control¹:** Involves changes in access control of an Interstate highway; or disposal of Interstate right-of-way (note: for C(26), (27), and (28), *any* change in access control will require the use of D(13) instead);
16. **Floodplains¹:** Requires work encroaching on a regulatory floodway or work affecting the base floodplain (100-year flood) elevations of a water course or lake, pursuant to Executive Order 11988 and 23 CFR 650 subpart A;
17. **Wild and Scenic Rivers¹:** Requires a Wild and Scenic River (WSR) Section 7 determination from the river-administering agency. There is only one WSR river in Colorado; Cache La Poudre River in CDOT R4 near Ft. Collins;
18. **Noise:** Is defined as a "Type I project" per 23 CFR 772.5 and/or CDOT Noise Guidance and results in impacted receptors;
19. **Air Quality:** Does the project require a project level air quality conformity analysis;
20. **Statewide Planning:** Is not included in or is inconsistent with the statewide transportation improvement program, and in applicable urbanized areas, the transportation improvement program; or

21. **Other Circumstances:** For situations that are atypical. (e.g. Superfund site).
- vi. For non-programmatic CatExs, CDOT shall submit the CatEx to FHWA for approval, prior to the time FHWA contemplates its next approval or grant action for the project, including:
 - 1. The CDOT Form 128 and the criteria checklist (see Appendix D) or equivalent documentation, including information describing why the project is a non-programmatic CatEx;
 - 2. If requested by the Division Office, a copy of the CatEx documentation prepared for the actions(s); and
 - 3. The already-completed Section 4(f) determination or approval or the Section 4(f) documentation for FHWA's determination or approval (if required).
 - vii. For fully documented non-programmatic CatExs, CDOT shall submit:
 - 1. CDOT Form 128; and
 - 2. The Documented Categorical Exclusion Template or other FHWA-approved document format.
 - viii. CDOT may request notice to proceed with acquisition of right-of-way or construction from FHWA once CDOT has completed its certification that a project is a CatEx (Part B of Form 128).
 - ix. The Division Office's objection to a CDOT certification signifies that FHWA will need to engage in project-specific review to verify that the certification is adequate, which may include consultation with other agencies. It may or may not constitute a disapproval of the action.
- b. Consulting with FHWA for actions that may involve unusual circumstances (23 CFR 771.117(b)), to determine the appropriate class of action for environmental analysis and documentation. CDOT may decide, or FHWA may require, additional studies to be performed prior to making a CatEx approval, or the preparation of an EA or EIS.
 - c. Meeting applicable documentation requirements in Section VII for CatEx approvals on FHWA's behalf (programmatic CatExs) and CatEx certifications to FHWA (non-programmatic CatExs), applicable approval requirements in Section VIII, and applicable quality control/quality assurance, monitoring, and performance requirements in Section IX.
 - d. Rely solely on CDOT employees to approve or certify CatExs submitted to FHWA under this agreement. CDOT may not delegate its responsibility for CatEx approvals or certifications to third parties (i.e. local government staff, consultants, contract employees, and other State agency staff).

VI. FHWA Responsibilities

- a. Providing timely advice and technical assistance on CatExs to CDOT, as requested.
- b. Providing timely input on and review of non-programmatic actions. FHWA will base its approval of CatEx actions on the project documentation and certifications prepared by CDOT under this Agreement.
- c. Overseeing the implementation of this Agreement in accordance with the provisions in Section IX, including applicable monitoring and performance provisions.
- d. Providing timely review of quarterly and annual reports, including identification of any projects for which a programmatic CatEx was approved by CDOT that FHWA deems needs additional scrutiny and/or to be a non-programmatic CatEx.

VII. Documentation of CDOT CatEx Approvals and Certifications

- a. CDOT shall maintain a project record for CatEx approvals it makes on FHWA's behalf and each CatEx submitted to FHWA for approval. This record should include at a minimum:
 - i. The Form 128
 - ii. Documentation that demonstrates the consideration of project effects, including criteria checklists (see Appendix D) or equivalent documentation, and any reports, forms, emails or other documents or exhibits;
 - iii. If public involvement is conducted as part of NEPA, a summary of public involvement complying with the requirements of the FHWA-approved public involvement policy (*CDOT NEPA Manual, Chapter 7*);
 - iv. Any stakeholder communication, correspondence, consultation, or public meeting documentation.
- b. Upon request by FHWA, CDOT will provide any electronic or paper project records.
- c. CDOT shall retain those records for a period of no less than three (3) years after completion of project construction. This record retention policy is listed in CDOT's Form 950.
- d. This 3-year retention provision does not relieve CDOT of its project or program recordkeeping responsibilities under 2 CFR 200.333 or any other applicable laws, regulations, or policies.

VIII. NEPA Approval Authority

- a. Generally, CDOT's approvals may only be made by Regional Planning and Environmental Managers or their designees, who must be environmental managers or equivalent. On occasion, Environmental Programs Branch (EPB) Branch or Environmental Section Managers or others may approve a CatEx (usually for situations like emergency response, CDOT Property Management actions, etc).

- b. RPEMs are considered qualified. Signature designees need to have the following minimum qualifications:
 - i. Be knowledgeable with and follow the appropriate subsections 23 CFR 771 through 774, and FHWA and CDOT procedures for environmental analysis and NEPA compliance.
 - ii. Have adequate experience addressing NEPA compliance for transportation projects or until such time, have their work reviewed by staff having the necessary experience.
 - iii. Have completed CDOT's CatEx Management Training Class or equivalent.

IX. Quality Control/Quality Assurance, Monitoring & Performance

- a. CDOT Quality Control & Quality Assurance
 - i. CDOT shall carry out regular quality control and quality assurance activities to ensure that its CatEx approvals, and CatEx submissions to FHWA for approval, are made in accordance with applicable law and this Agreement.
- b. CDOT Performance Monitoring and Reporting
 - i. FHWA and CDOT agree to cooperate in monitoring performance under this Agreement and work to assure quality performance.
 - ii. CDOT will provide a summary table (Appendix E) quarterly, or as agreed to by CDOT's Environmental Section Manger and FHWA's Environmental Program Manager, including information for programmatic and non-programmatic CatExs. The list is anticipated to be generated by CDOT's Environmental Programs Branch (EPB) from data in SAP. The summary table will be provided to FHWA no later than 15 calendar days following the end of each State Fiscal quarter or as agreed to by CDOT's Environmental Section Manager and FHWA's Environmental Program Manager. Performance gaps that have been noted by CDOT or FHWA in the performance period will be captured in the CDOT CatEx summary. The list of actions certified will contain the following information:
 - 1. The Federal and CDOT project numbers and a project name, including the route number or facility name where the project will occur;
 - 2. Identification of the CatEx action listed in 23 CFR 771.117(c) or (d) (Appendices A and B), or if the action is not listed in 23 CFR 771.117, identification of the action as DX;
 - 3. Start and end dates for the NEPA review and CatEx approval. Start Date is defined as the Environmental Scoping Date. For non-programmatic projects, the end date is the FHWA signature end. For programmatic projects, the end date is CDOT signature; and
 - 4. Comments (as necessary).

- iii. CDOT agrees to annually submit to FHWA a report summarizing its performance under this Agreement no later than 45 calendar days following the end of each State Fiscal Year. The report will identify any areas where improvement is needed and the measures CDOT is taking to implement those improvements. The report will include a description of actions taken by CDOT as part of its quality control efforts under Section IX.b.ii and a list of all CatExs as identified in Section IX.b.ii. The report will include a description of actions taken by CDOT as part of its quality control and quality assurance efforts under Section VIII.A. The annual report will include:
 - 1. A list of all programmatic and non-programmatic CatExs completed during the year (consolidating the quarterly reports);
 - 2. A list of all CDOT employees authorized to approve programmatic CatExs including a brief statement of their qualifications;
 - 3. Follow-up from prior years' reports recommendations;
 - 4. State-wide quality control and assurance activities that were undertaken in the past year;
 - 5. The results from implementing quality control and assurance activities;
 - 6. Identification of training needs and training provided;
 - 7. CatEx Program changes that have occurred due to the review(s); and
 - 8. CatEx Program changes that should be considered.
- c. FHWA Oversight and Monitoring
 - i. FHWA and CDOT will cooperate in monitoring performance under this Agreement and work to assure quality performance.
 - ii. FHWA will review CDOT's CatEx Summary table, identified in Section IX.b.ii., summarizing approvals made under this Agreement. FHWA will review and provide comments or concerns within 10 working days.
 - iii. FHWA will review CDOT's Annual CatEx Programmatic Agreement Report, identified in Section IX.b.iii., summarizing CDOT's performance under this Agreement and provide comments or concerns within 20 working days.
 - iv. Monitoring by FHWA may include consideration of the technical competency and organizational capacity of CDOT, as well as CDOT's performance of its programmatic CatEx processing functions. Performance considerations include, without limitation, the quality and consistency of CDOT's programmatic CatEx approvals, project environmental documentation, CatEx submissions to FHWA for approval, adequacy and capability of CDOT staff and consultants, and the effectiveness, quality and consistency of CDOT's administration of its programmatic CatEx approvals.

- v. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to CDOT's performance under this Agreement. The FHWA may require CDOT to perform other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.

X. Amendments

- a. If the parties agree to amend this Agreement, then FHWA and CDOT may execute an amendment with new signatures and dates of the signatures. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement.

XI. Effective Date of this Agreement

- a. This agreement goes into effect upon the signature date. CatEx projects with a front part/top part signature, prior to the effective date, are grandfathered exempted from this agreement.

XII. Term, Renewal, and Termination

- a. This Agreement shall have a term of five (5) years, effective on the date of the last signature. CDOT shall post and maintain an executed copy of this Agreement on its website, available to the public.
- b. This Agreement is renewable for additional five (5) year terms if CDOT requests renewal, and FHWA determines that CDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate the effectiveness of the Agreement its overall impact on the environmental review process, and whether the Agreement requires an Amendment.
- c. Either party may terminate this Agreement at any time by giving at least 30 days written notice to the other party.
- d. Expiration or termination of this Agreement shall mean that CDOT is not allowed to make CatEx approvals on FHWA's behalf.
- e. Execution of this Agreement and implementation of its terms by both parties provides evidence that both parties have reviewed this Agreement and agree to the terms and conditions for its implementation.

The CDOT CatEx Agreement is effective upon the date of the last signature below.

John M. Cater, P.E.
Colorado Division Administrator
Federal Highway Administration

Date

Shailen P. Bhatt
Executive Director
Colorado Department of Transportation

Date

Appendix A: CatEx Listed in 23 CFR 771.117(c)

C List Categories

The following actions meet the criteria for CatExs in the CatEx regulations (40 CFR 1508.4) and §771.117(a), and normally do not require any further NEPA approvals by the FHWA:

- C1. Activities which do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.
- C2. Approval of utility installations along or across a transportation facility.
- C3. Construction of bicycle and pedestrian lanes, paths, and facilities.
- C4. Activities included in the State's *highway safety plan* under 23 U.S.C. 402.
- C5. Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.
- C6. The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
- C7. Landscaping.
- C8. Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
- C9. The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):
 - a. Emergency repairs under 23 U.S.C. 125; and
 - b. The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:
 - i. Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and
 - ii. Is commenced within a 2-year period beginning on the date of the declaration.
- C10. Acquisition of scenic easements.
- C11. Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.

- C12.Improvements to existing rest areas and truck weigh stations.
- C13.Ridesharing activities.
- C14.Bus and rail car rehabilitation.
- C15.Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
- C16.Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
- C17. The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CatEx.
- C18.Track and railbed maintenance and improvements when carried out within the existing right-of-way.
- C19.Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
- C20. Promulgation of rules, regulations, and directives.
- C21.Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.
- C22.Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way.
- C23.Federally-funded projects:
- a. That receive less than \$5,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.fta.dot.gov) of Federal funds; or

- b. With a total estimated cost of not more than \$30,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.fta.dot.gov) and Federal funds comprising less than 15 percent of the total estimated project cost.
- C24. Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys. (note: Generally, these activities are done as part of project development and do not require a separate Form 128 or to be identified on the Form 128 for a project. A separate Form 128 will only be required when these activities are done as a stand-alone activity (e.g. geotechnical investigation for rockfall mitigation or archeological investigations done separately from construction projects))
- C25. Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation.
- C26. Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in 23 CFR 771.117(e).
- C27. Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in 23 CFR 771.117(e).
- C28. Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in 23 CFR 771.117(e).
- C29. Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CatEx.
- C30. Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals

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Appendix B: CatExs listed in 23 CFR 771.117(d)

D List Categories

Additional actions which meet the criteria for a CatEx in the CatEx regulations (40 CFR 1508.4), (40 CFR 771.117), and paragraph (a) of this section may be designated as CatExs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CatExs are satisfied and that significant environmental effects will not result.

Examples of such actions include:

1. [Reserved]
2. [Reserved]
3. [Reserved]
4. Transportation corridor fringe parking facilities.
5. Construction of new truck weigh stations or rest areas.
6. Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.
7. Approvals for changes in access control
8. Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.
9. Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
10. Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
11. Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.
12. Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a 2CatEx only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

- a. Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.
 - b. Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.
13. Actions described in 23 CFR 771.117 paragraphs (c)(26), (c)(27), and (c)(28) that do not meet the constraints in 23 CFR 771.117(e).

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Appendix C: CDOT Form 128



Colorado Department of Transportation NEPA DETERMINATION / PROJECT CERTIFICATION

A. PROJECT INFORMATION				Form:
Environmental Scoping Date:	Project #:	Subaccount #:	Related Subaccount #:	
Project Name:				
Project Description (and Location):				
Region:	CDOT Program/Residency:	Environmental PM:	FHWA Area Engineer:	
FHWA NEXUS <input type="checkbox"/> Yes <input type="checkbox"/> No Other Federal NEXUS: <input type="checkbox"/> Yes <input type="checkbox"/> No Project Lead: <input type="checkbox"/> CDOT <input type="checkbox"/> Local Agency <input type="checkbox"/> Other				
Class of Action: <input type="checkbox"/> EIS/ROD <input type="checkbox"/> EA/FONSI <input type="checkbox"/> CatEx Construction/Contracting Method: <input type="checkbox"/> Design-Bid-Build <input type="checkbox"/> Design Build				
If CatEx, the project fits the following CE number: <input type="checkbox"/> GM/GC <input type="checkbox"/> Other:				
B. THE NEPA PROCESS				
Resource Clearances			Revised Clearances	
<i>Check Box Only if Impacted</i>			Revised Clearance date	Revised Clearance date
	Clearance Date			
Air Quality (hot spot analysis)	<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
Noise	<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
Hazmat - ISA/MESA	<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
T&E and State Listed Species	<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
Wetland Delineation (Survey)	<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
Paleontology	<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
Archaeology	<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
History	<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
Section4(f) - Historic	<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
Section4(f) - Non-Historic	<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
Section6(f)	<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
Other:	<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
All required clearance actions indicated have been completed for the design plans referenced below. If Project is a Categorical Exclusion, no significant environmental impacts will result from this project. Construction is not authorized until approved in Part E below. Implementation of project shall include required mitigation commitments.			All required clearance actions indicated have been completed for the design plans referenced below. If Project is a Categorical Exclusion, no significant environmental impacts will result from this project. Construction is not authorized until approved in Part E below. Implementation of project shall include required mitigation commitments.	
<input type="checkbox"/> Action meets requirements to be a Programmatic CatEx per the FHWA/CDOT Programmatic Agreement for Categorical Exclusions (FHWA signature below not required).			FHWA signature is not required because:	
<input type="checkbox"/> This is an EA/FONSI or EIS/ROD. The Decision Document has already been signed by FHWA (FHWA signature below is not required).			<input type="checkbox"/> This is a Programmatic CatEx	<input type="checkbox"/> This is a Programmatic CatEx
			<input type="checkbox"/> This is a Reevaluation of an EA/FONSI or EIS/ROD (1399 form has already been signed.)	<input type="checkbox"/> This is a Reevaluation of an EA/FONSI or EIS/ROD (1399 form has already been signed.)
Design Plan Set and Date: _____ / _____ / _____			_____ / _____ / _____	_____ / _____ / _____
RPEM Signature and Date: _____ / _____ / _____			_____ / _____ / _____	_____ / _____ / _____
FHWA Division Administrator Signature (if required) I concur with the above category designation and the scope of environmental clearance/permits indicated above.			FHWA Division Administrator Signature (if required) I concur with the above category designation and the scope of environmental clearance/permits indicated above.	
Signature and Date: _____ / _____ / _____			_____ / _____ / _____	_____ / _____ / _____
Comments:				



Colorado Department of Transportation NEPA DETERMINATION / PROJECT CERTIFICATION

C. PERMITS AND ADDITIONAL REQUIREMENTS Form: 01

Resource Clearances		Revised Clearances		
<i>Check Box Only if Impacted</i>	Date Completed	Date Updated	Date updated	
404 Permit	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
401 Certification	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
402 Certification	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Const. Stormwater Permit (CDPS)	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Const. Dewatering Permit	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Noxious Weed Management	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
SB40 Certification	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Wetland Finding	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Structure Demolition Permit	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Hazardous Materials – Phase II	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Permanent WQ	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
SWMP	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Other:	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____

D. Comments

E. ENVIRONMENTAL PROJECT CERTIFICATION

All clearance and permit requirements for this project have been addressed and mitigation included. The appropriate documentation is on file in the Region office.

	Clearance	Revised Clearance	Revised Clearance
Design Plan Set and Date: _____ / _____	_____ / _____	_____ / _____	_____ / _____
Certification Type:	<input type="checkbox"/> Advertisement <input type="checkbox"/> Advertisement & Construction <input type="checkbox"/> Other: _____	<input type="checkbox"/> Advertisement <input type="checkbox"/> Advertisement & Construction <input type="checkbox"/> Other: _____	<input type="checkbox"/> Advertisement <input type="checkbox"/> Advertisement & Construction <input type="checkbox"/> Other: _____
RPEM Signature & Date: _____ / _____	_____ / _____	_____ / _____	_____ / _____

Note to Project Manager: Any changes to the plans and specifications after the date of the RPEM signature in Part B that affect environmental impacts or mitigation must be approved by the RPEM.

Distribution:
RPEM (original): copies to Project Manager, Right of way (if ROW required)

CDOT Form #128b (07/21/2016)

Appendix D: Example CatEx Criteria List

*If the project is category C26, C27, or C28, exceeding any of the starred criteria would require that category D13 be used instead.

Project Name:		Project Number:		
Environmental Project Manager:		Date Checklist Completed:		
Resource			Impacts from Project	
			Yes	No
1	Through Lanes: Results in capacity expansion of a roadway by addition of through lanes;			
2	Right of Way*: Involves acquisitions (fee simple) of more than a minor amount of right-of-way. A minor amount of right-of-way is defined as not more than 10% of any adjacent parcels for transportation related facilities (e.g. rest areas, intersections, maintenance yards) (note, this requirement does not apply to “perfection of title for ROW” projects under 23 CFR 771.117(c)(5));			
3	Displacements: Involves acquisitions that result any residential or non-residential displacements;			
4	Early Acquisition: Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project (23 U.S.C. § 108(c));			
5	Section 404 Permit*: Requires a U.S. Army Corps of Engineers Section 404 (33 U.S.C. § 1344) permit other than a Nationwide Permit or a Regional General Permit;			
6	Bridge Permit*: Requires a U.S. Coast Guard bridge permit (33 U.S.C. § 401);			
7	Historic Properties*: Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act (54 U.S.C. § 306108);			
8	Section 4(f)*: Requires the use of properties protected by Section 4(f) (49 U.S.C. § 303/23 U.S.C. § 138) that cannot be documented with an FHWA <i>de minimis</i> or exception;			
9	Section 6(f)*: Converts lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965 (54 U.S.C. § 200305), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k, 64 Stat. 430), the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i; 50 Stat. 917), or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property;			
10	Endangered Species*: Requires formal consultation under Section 7 of the Endangered Species Act (16 U.S.C. 1536);			
11	Temporary Access and Road Closures*: Involves the construction of temporary access, or the temporary closure of existing road, bridge, or ramps, that would result in major traffic disruptions, unless the use of such facilities satisfy the following conditions: <ul style="list-style-type: none"> a. Provisions are made for access by local traffic and so posted; b. The temporary access or closure, to the extent possible, will not interfere with any local special event or festival; c. The closure does not substantially change the environmental consequences of the action; d. There is no substantial controversy associated with the closure; 			
12	Permanent Road Closures*: Involves the permanent closure of existing road, bridge, or ramps, unless the following conditions are met: <ul style="list-style-type: none"> a. No major traffic disruptions; b. No adverse effects to through-traffic dependent business; c. No closure that substantially changes the environmental consequences of the action; d. No substantial controversy associated with the closure; 			

Project Name:		Project Number:	
Environmental Project Manager:		Date Checklist Completed:	
Resource		Impacts from Project	
		Yes	No
13	Access Control*: Involves changes in access control of an Interstate highway; or disposal of Interstate right-of-way (note: for C(26), (27), and (28), <i>any</i> change in access control of an interstate highway will require the use of D(13) instead);		
14	Floodplains*: Requires work encroaching on a regulatory floodway or work affecting the base floodplain (100-year flood) elevations of a water course or lake, pursuant to Executive Order 11988 and 23 CFR 650 subpart A;		
15	Wild and Scenic Rivers*: Requires a Wild and Scenic River Section 7 determination from the river-administering agency. Please note that there is only one WSR river in Colorado: Cache La Poudre River in Region 4 near Ft. Collins.		
16	Noise: Is defined as a "Type I project" per 23 CFR 772.5 and/or CDOT Noise Guidance and results in impacted receptors;		
17	Air Quality: Does the project require a project level air quality conformity analysis;		
18	Statewide Planning: Is not included in or is inconsistent with the statewide transportation improvement program, and in applicable urbanized areas, the transportation improvement program; or		
19	Other Circumstances: For situations that are atypical. (Superfund site)		
Description of Project and it's impacts (for resources checked yes, please add description of project and assumed impacts):			

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